

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

*In re Former Employees of Washington Mutual
Bank v. FDIC as Receiver for Washington
Mutual Bank, et al.*

Master File No. C09-0504 RAJ

MARK J. CONWAY and ROBERT L.
ANDERSON and MICHAEL E.
BRANDEBERRY, IGOR CERC, JEFFREY
DEUEL, CAMILLE EVERTT, MARCINE
HULL, KATHRYN GREVE, ROBERT
JOHNSON, ROLLAND JURGENS,
KENNETH KIDO, CATHERINE E.
KILLIEN, JUDY MURRAY, ELIZABETH
PEPPER, KENDRA S. PRATT, LANE
PREMO, JOHN ROBINSON, BRETT A.
ROSS, JANQUELIN F. SCHRAG, SCOTT
SHAW, CHARLES M. SLEDD, JANE
SUCHAN, NESLON TURLA, MICHAEL
WALSER, DONALD P. WILHELM,
individually,

NO. C09-0781 RAJ

THIRD AMENDED COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs,

v.

FEDERAL DEPOSIT INSURANCE
CORPORATION as receiver for Washington
Mutual Bank; and FEDERAL DEPOSIT
INSURANCE CORPORATION in its
Corporate Capacity

Defendants.

1 Plaintiffs, MARK J. CONWAY, ROBERT L. ANDERSON, MICHAEL E.
2 BRANDEBERRY, IGOR CERC, JEFFREY DEUEL, CAMILLE EVERETT,
3 MARCINE HULL, KATHRYN GREVE, ROBERT JOHNSON, ROLLAND
4 JURGENS, KENNETH KIDO, CATHERINE E. KILLIEN, JUDY MURRAY,
5 ELIZABETH PEPPER, KENDRA S. PRATT, LANE PREMO, JOHN ROBINSON,
6 BRETT A. ROSS, JANQUELIN SCHRAG, SCOTT SHAW, CHARLES M. SLEDD,
7 JANE SUCHAN, NELSON TURLA, MICHAEL WALSER, DONALD P. WILHELM
8 bring this cause of action against Defendants FEDERAL DEPOSIT INSURANCE
9 CORPORATION, as receiver for Washington Mutual Bank, and in its corporate
10 capacity and allege as follows:
11

12 I. PARTIES

13
14 1. Washington Mutual Bank (“Washington Mutual”) was a banking
15 company headquartered and doing business at Seattle, Washington.

16 2. Federal Deposit Insurance Corporation (“FDIC”) is a corporation and
17 agency of the United States that acted as the successor and receiver for Washington
18 Mutual until Washington Mutual was sold to JP Morgan Chase, another banking
19 company.
20

21 3. Federal Deposit Insurance Corporation (“FDIC”) in its corporate
22 capacity acted as the successor for Washington Mutual until Washington Mutual was
23 sold to JP Morgan Chase, another banking company.

24 4. Washington Mutual, at all times material to the allegations in this
25 complaint, was a corporation headquartered and with its principal place of business in
26
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1 Seattle, Washington. Washington Mutual is not made a party to this suit because it has
2 been dissolved and placed into receivership with the FDIC.

3 5. Upon information and belief, FDIC is a corporation and agency of the
4 United States Government, with its principal place of business in the District of
5 Columbia, and at all times material, is the successor and receiver for Washington
6 Mutual. FDIC is made a defendant herein both as a receiver for Washington Mutual
7 ("FDIC-Receiver") and in its corporate capacity ("FDIC-Corporate") as an independent
8 entity of the United States Government with separate duties to Plaintiff.
9

10 6. Plaintiff MARK J. CONWAY is an individual currently residing in King
11 County, Washington. Mr. Conway was an employee of Washington Mutual at all
12 material times.
13

14 7. Plaintiff MICHAEL E. BRANDEBERRY is an individual currently
15 residing in King County, Washington. Mr. Brandeberry was an employee of
16 Washington Mutual at all material times.

17 8. Plaintiff IGOR CERC is an individual currently residing in King County,
18 Washington. Mr. Cerc was an employee of Washington Mutual at all material times.
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20 9. Plaintiff JEFFREY DEUEL is an individual currently residing in King
21 County, Washington. Mr. Deuel was an employee of Washington Mutual at all material
22 times.

23 10. Plaintiff CAMILLE EVERETT is an individual currently residing in
24 King County, Washington. Ms. Everett was an employee of Washington Mutual at all
25 material times.
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1 11. Plaintiff MARCINE HULL is an individual currently residing in King
2 County, Washington. Ms. Hull was an employee of Washington Mutual at all material
3 times.

4 12. Plaintiff KATHRYN GREVE is an individual currently residing in King
5 County, Washington. Ms. Greve was an employee of Washington Mutual at all material
6 times.

7 13. Plaintiff ROBERT JOHNSON is an individual currently residing in King
8 County, Washington. Mr. Johnson was an employee of Washington Mutual at all
9 material times.

10 14. Plaintiff ROLLAND JURGENS is an individual currently residing in
11 King County, Washington. Mr. Jurgens was an employee of Washington Mutual at all
12 material times.

13 15. Plaintiff KENNETH KIDO is an individual currently residing in King
14 County, Washington. Mr. Kido was an employee of Washington Mutual at all material
15 times.

16 16. Plaintiff CATHERINE E. KILLIEN is an individual currently residing in
17 King County, Washington. Ms. Killien was an employee of Washington Mutual at all
18 material times.

19 17. Plaintiff JUDY MURRAY is an individual currently residing in King
20 County, Washington. Ms. Murray was an employee of Washington Mutual at all
21 material times.

1 18. Plaintiff ELIZABETH PEPPER is an individual currently residing in
2 King County, Washington. Ms. Pepper was an employee of Washington Mutual at all
3 material times.

4 19. Plaintiff KENDRA S. PRATT is an individual currently residing in King
5 County, Washington. Ms. Pratt was an employee of Washington Mutual at all material
6 times.

7 20. Plaintiff LANE PREMO is an individual currently residing in King
8 County, Washington. Mr. Premo was an employee of Washington Mutual at all material
9 times.

10 21. Plaintiff JOHN ROBINSON is an individual currently residing in King
11 County, Washington. Mr. Robinson was an employee of Washington Mutual at all
12 material times.

13 22. Plaintiff BRETT A. ROSS is an individual currently residing in King
14 County, Washington. Mr. Ross was an employee of Washington Mutual at all material
15 times.

16 23. Plaintiff JANQUELIN F. SCHRAG is an individual currently residing in
17 Snohomish County, Washington. Ms. Schrag was an employee of Washington Mutual
18 at all material times.

19 24. Plaintiff SCOTT SHAW is an individual currently residing in King
20 County, Washington. Mr. Shaw was an employee of Washington Mutual at all material
21 times.

1 25. Plaintiff CHARLES M. SLEDD is an individual currently residing in
2 King County, Washington. Mr. Sledd was an employee of Washington Mutual at all
3 material times.

4 26. Plaintiff JANE SUCHAN is an individual currently residing in King
5 County, Washington. Ms. Suchan was an employee of Washington Mutual at all
6 material times.

7 27. Plaintiff NELSON TURLA is an individual currently residing in King
8 County, Washington. Mr. Turla was an employee of Washington Mutual at all material
9 times.

10 28. Plaintiff MICHAEL WALSER is an individual currently residing in
11 Kitsap County, Washington. Mr. Walser was an employee of Washington Mutual at all
12 material times.

13 29. Plaintiff DONALD P. WILHELM is an individual currently residing in
14 King County, Washington. Mr. Wilhelm was an employee of Washington Mutual at all
15 material times.

16 **II. JURISDICTION AND VENUE**

17 30. The United States District Court has subject matter jurisdiction over this
18 matter pursuant to 28 U.S.C. §1331 and 12 U.S.C. §1821 AND 28 U.S.C. § 1346.

19 31. This Court has personal jurisdiction over all the parties.

20 32. Venue is proper pursuant to 28 U.S.C. 1391(e).

21 33. Venue is proper pursuant to 29 U.S.C. § 1332(e) and 28 U.S.C. § 1391.

22 34. Venue is proper pursuant to 12 U.S.C. § 1819(b)(2)(a) and 1821 (d)(6).

1 35. Plaintiff has complied with all procedural and administrative
2 prerequisites to filing suit by presenting a claim to the FDIC which has been denied.

3 36. Venue is proper pursuant to 28 U.S.C. § 2201.
4

5 **III. FACTUAL BACKGROUND**

6 37. Plaintiffs, each of them, entered into a binding employment contract with
7 Washington Mutual which contained a provision referred to as a “change in control”
8 clause. The change in control clause provided for compensation to the employee if
9 Washington Mutual underwent a change in control.

10 38. Washington Mutual’s liability pursuant to Plaintiffs’ change in control
11 agreements was a readily ascertainable sum-certain amount as of September 2008.

12 39. According to the FDIC’s website, “On September 25, 2008, the banking
13 operations of Washington Mutual, Inc - Washington Mutual Bank, Henderson, NV and
14 Washington Mutual Bank, FSB, Park City, UT (Washington Mutual Bank) were **sold** in
15 a transaction facilitated by the Office of Thrift Supervision (OTS) and the Federal
16 Deposit Insurance Corporation (FDIC).” (Emphasis added.)
17

18 40. On or about September 25, 2008, Washington Mutual underwent a
19 change in control pursuant to that certain Purchase and Assumption Agreement. *See*
20 http://www.fdic.gov/about/freedom/Washington_Mutual_P_and_A.pdf (hereinafter the
21 “PAA”). FDIC, in both its corporate and receiver capacity, retained the Washington
22 Mutual liabilities to the Washington Mutual employees, including payment of wages,
23 for change in control.
24

25 41. All employment agreements, including the change in control and other
26 compensation agreements, were explicitly excluded from the FDIC’s sale to JP Morgan
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1 Chase. *See* PAA, Schedule 2.1, ¶ 5. Therefore, the liability for the change in control
2 agreements remains with the FDIC.

3 42. Plaintiffs, each of them, filed claims with the FDIC to recover
4 compensation due and owing based upon the change of control contract and other
5 liabilities of the FDIC.
6

7 43. The FDIC breached Plaintiffs' employment contracts by refusing to
8 honor Plaintiffs' claims.

9 44. Plaintiffs have been individually damaged by the wrongful conduct of
10 the FDIC.

11 45. The Federal Deposit Insurance Act states that the FDIC "[s]hall pay all
12 valid obligations of the insured depository institution " 12 U.S.C. § 1821(d)(2)(H).
13

14 46. The Federal Deposit Insurance Act further obligates the FDIC to "allow
15 any claim received on or before the date specified in the notice published under
16 paragraph (32)(B)(i) by the receiver from any claimant which is proved to the
17 satisfaction of the receiver." 12 U.S.C. § 1821(d)(5)(B).
18

19 **IV. FIRST CAUSE OF ACTION:**
20 **BREACH OF CONTRACT**

21 47. Plaintiffs repeat and reallege each and every allegation set forth in the
22 foregoing paragraphs as if fully set forth herein.

23 48. Plaintiffs had binding employment agreements with Washington Mutual
24 which included compensation in the event that Washington Mutual Bank underwent a
25 change in control event.
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1 49. In or about September 2008, Washington Mutual underwent a change in
2 control event.

3 50. The FDIC, in both its capacity as a receiver and corporation, acted as the
4 successor and receiver for Washington Mutual.

5 51. The FDIC did not sell Plaintiffs' binding employment agreements with
6 Washington Mutual to JP Morgan Chase pursuant to the PAA.

7 52. The FDIC breached plaintiffs' employment contracts by refusing to
8 honor the change in control clause and refusing to pay the liability due thereunder.
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10
11 **V. PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiffs request the following relief:

13 53. Judgment against Defendant for direct and consequential damages in an
14 amount to be determined at trial;

15 54. Exemplary damages for the willful withholding of wages pursuant to
16 RCW § 49.52;

17 55. Attorneys' fees and costs pursuant to RCW §§ 49.48 and 49.52;

18 56. For such other and further relief as this court deems just and equitable.
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20 **VI. JURY TRIAL DEMAND**

21 Plaintiffs demand trial by jury of 12 pursuant to Fed. R. Civ. P 38 upon all issues.
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1 DATED: this 5th day of November 2009.

2 BRESKIN JOHNSON & TOWNSEND, PLLC

3
4 By: /s/ Roger M. Townsend

5 Roger Townsend, WSBA # 25525

6 Daniel Foster Johnson, WSBA # 27848

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9 Seattle, WA 98101

10 206-652-8660

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12 rtownsend@bjtlegal.com

13 Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I, Amber Siefer, hereby certify that on November 5th, 2009, I electronically filed the foregoing with the Clerk of the Court for the United States District Court by using the CM/ECF system.

I certify that all participants in the case are registered CF/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Amber R. Siefer
Amber R. Siefer